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SUBJECT: NIGERIA: CIVIL SOCIETY GROUPS ASK TO NULLIFY CONSTITUTION

REF: LAGOS 318

11. (SBU) Summary: NGO and political leaders have filed two court cases arguing that the 1999 Nigeria constitution is illegal because it was dictated and imposed by a departing military government. While judicial concurrence is unlikely, the cases reflect growing frustration with the constitutional and political status quo. End Summary.

12. (SBU) On July 29, a federal high court resumed hearing a suit brought by Nigeria's oldest Senior Advocate of Nigeria, Tanimose Bankole-Oki, seeking the nullification of the 1999 constitution. Bankole-Oki contended that the preamble to the 1999 military decree, which states, "We the people of Nigeria do hereby make, enact and give ourselves a constitution," is a blatant misrepresentation of fact. He claims that the former military head of state, General Abdulsalami Abubakar, and the Provisional Ruling Council (PRC) promulgated the decree that gave birth to the constitution without consulting the people of Nigeria. Bankole-Oki called the constitution a fraud, said it lacked legitimacy, and stated it should be replaced. The presiding judge adjourned proceedings until November 2009.

13. (SBU) Yinka Odumakin, political activist and Secretary of Afenifere Renewal Group, an influential Yoruba socio-political organization, told PolSpec that the court cases were meant to pressure the GON to endorse civil society's demand for a "people-oriented constitution." Odumakin, a Bankole-Obi supporter, stated that only a negotiated constitution in which ethnic nationalities play key roles could achieve true federalism and good governance.

14. (SBU) This is not the first civil society attempt to nullify the constitution. Since 2004, the Pro-National Conference Organization (PRONACO) has been agitating for a sovereign national conference bringing together all ethnic nationalities to deliberate on a new constitution. In 2005, PRONACO held such a conference and produced a draft with far reaching recommendations. PRONACO also supports the court case challenging the legality of the 1999 constitution.

15. (SBU) In addition, the Movement for New Nigeria (MNN), an umbrella group of civil society organizations, sued in Abuja in 2007 for the nullification of the 1999 constitution. Notable human rights activists, including elder statesman Anthony Enahoro and Niger Delta activist Majaheedat Dokubo-Asari, are reportedly among the supporters of the Abuja suit. The MNN attorney, Tony Nnandi, complains that the case has suffered 13 adjournments and is still in its preliminary stages.

16. (SBU) COMMENT: Judges, claiming that they lack the jurisdiction to interpret or nullify the constitution, are expected to dismiss these cases eventually. However, the plaintiffs - NGO and political elites in the southern half of the country -- are seeking to make the broader point that they reject the constitutional status quo and the absence thus far of meaningful electoral reform. End Comment.

17. (U) This cable was cleared by Embassy Abuja.

BLAIR